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December 13, 2007 (202) 224-2633

STATEMENT OF SENATOR EDWARD M. KENNEDY AT THE JOINT HOUSE-SENATE HEARING ON RECENT NATIONAL LABOR RELATIONS BOARD DECISIONS

(As Prepared for Delivery)

I'm pleased that our House and Senate subcommittees have come together today to consider the state of democracy in the American workplace. I commend Senate Subcommittee Chair Patty Murray and House Subcommittee Chair Rob Andrews for holding this hearing this hearing. Their strong leadership is making an important difference in the lives of American workers, and I look forward to our continuing work together.

The National Labor Relations Act was enacted as part of FDR's New Deal, at a time of great economic uncertainty and inequality. Our country needed a new direction, and the Act marked the beginning of a new national labor policy to "encourage the practice and procedure of collective bargaining." That Act and their provisions led our nation out of economic desperation and toward a new prosperity.

It was a rising tide that truly did lift all boats. Union membership grew, and unions built America's strong middle class. From the 1940s to the 1960s, as union membership reached its peak, wages and productivity rose together. Workers shared in corporate gains and our entire society benefited.

That shared prosperity, however, is under attack today. Once again, millions of Americans are suffering from rising economic insecurity and inequality. Union membership has dropped, the middle class has declined, and for millions of families, the American dream is increasingly out of reach.

Working men and women have not lost their voice by choice. More than half say they would join a union if they could – which means that 60 million workers want a stronger voice at work. They want to exercise their democratic rights. They want to build a new time of shared economic prosperity.

The National Labor Relations Board is supposed to protect the voice of American workers, but the Board is no longer fulfilling that responsibility. Instead of enacting policies that encourage collective bargaining, it seems hostile to the very idea of such bargaining. Each time the Board uses its power to undercut the protections of the law, the nation's workers pay the price.

In September, the Board issued a series of decisions that tilt the playing field against working people. The Board is taking a result-oriented approach—and the result is weaker protections for American workers.

The Board's decision in Dana Corporation demonstrates this approach. The case attacks the basic principle of majority representation. In a sudden departure from decades of precedent, the Board decided that a minority of workers can overturn the will of the majority – if the majority wants a union. The decision invites the minority to intervene and force a contentious election to undo union recognition, delay bargaining, and obstruct the relationship between workers and management.

As the case clearly shows, the Board clearly believes in the superiority of employer-dominated elections to block unions – the result they're clearly after. In that case, workers wanted a union, but the Board ruled that determining the will of employees' from signatures on cards was "admittedly inferior to the election process." Yet in another case on the same day, Wurtland Nursing, when workers wanted to get rid of their union, the Board said employees' signatures – simply asking for a vote – were "objective proof" of the employees' will to reject the union.

The Dana decision suddenly changed the law in order to undercut union organizing. The law has always allowed unions to avoid a management-dominated selection process by negotiating voluntary recognition agreements. But overnight, this Labor Board changed all that, allowing a minority of workers to block a union, even if a majority had already said they want the union to represent them.

Take the case of Jonathan Upright, a sales consultant with AT&T in Winston Salem. He'd been working hard to get a majority of his coworkers to sign cards saying they want a union, and AT&T has agreed to recognize the union if he obtained enough cards. Now the Board says those cards aren't good enough.

Under these new decisions, even after a majority of workers have said they want a union, a minority can force the entire workforce to reconsider that decision. But if Jonathan wanted to get rid of a union, the Board says those cards would be good enough – no election needed.

Other recent Board decisions would let employers off the hook for violations of the law. More than 30,000 workers were victims of labor law violations last year. The law – and basic fairness – says that those workers should receive the backpay they lost because they were victims of discrimination, but recent decisions by the Board make it harder for workers to prove they're entitled to backpay. That's wrong. The Board should not be protecting lawbreakers at the expense of justice for their victims.

We should all – Democrat and Republican – be concerned about the state of collective bargaining in our country. History teaches us that the nation's unions and the middle class rise and fall together. They've been placed apart in recent years, and we need to bring them back together. That's why I look forward very much to hearing from our witnesses today.

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